



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A- LLP

DATE: NOV. 15, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an IT consulting company, seeks to employ the Beneficiary as an application development manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its ability to pay the proffered wage of this Beneficiary as well as its proffered wage obligations on all of the other Form I-140, Immigrant Petitions for Alien Workers (I-140 petitions), it had filed.

On appeal the Petitioner submits a brief and asserts that the evidence of record establishes its ability to pay its proffered wage obligations on this petition and all of its other I-140 petitions.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

To be eligible for the classification it requests for the beneficiary, a petitioner must establish that it has the ability to pay the proffered wage stated on the labor certification. As provided in the regulation at 8 C.F.R. § 204.5(g)(2):

The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records may be submitted by the petitioner or requested by [USCIS].

As indicated in the above regulation, the Petitioner must establish its continuing ability to pay the proffered wage from the priority date¹ of the petition onward. In this case the proffered wage is \$110,510 per year and the priority date is June 19, 2018.

In determining a petitioner's ability to pay the proffered wage, USCIS first examines whether the beneficiary was employed and paid by the petitioner during the period following the priority date. A petitioner's submission of documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage for the time period in question, when accompanied by a form of evidence required in the regulation at 8 C.F.R. § 204.5(g)(2), may be considered proof of the petitioner's ability to pay the proffered wage. In this case the record indicates that the Beneficiary began working for the Petitioner before the priority date and that in 2018 he received gross pay of \$83,381.40. Since this figure was below the proffered wage of \$110,510 per year, the Petitioner has not established its ability to pay the proffered wage from the priority date of June 19, 2018, onward based on wages paid to the Beneficiary.

If a petitioner does not establish that it has paid the beneficiary an amount equal to or above the proffered wage from the priority date onward, USCIS will examine the net income and net current assets figures recorded on the petitioner's federal income tax return(s), annual report(s), or audited financial statements(s). If either of these figures, net income or net current assets, equals or exceeds the proffered wage or the difference between the proffered wage and the amount paid to the beneficiary in a given year, the petitioner would ordinarily be considered able to pay the proffered wage during that year. When a petitioner has filed other I-140 petitions, however, it must establish that its job offer is realistic not only for the instant beneficiary, but also for its other I-140

¹ The "priority date" of a petition is the date the underlying labor certification application is filed with the DOL. See 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied from the priority date onward.

beneficiaries. A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977). Therefore, in the event of multiple beneficiaries the petitioner must demonstrate its ability to pay the combined proffered wages of the instant beneficiary and every other I-140 beneficiary from the priority date of the instant petition until the other I-140 beneficiaries obtain lawful permanent resident status. *See Patel v. Johnson*, 2 F.Supp. 3d 108, 124 (D.Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries).

In this case USCIS records show that the Petitioner filed multiple I-140 petitions for other beneficiaries both before and after the instant petition. Therefore, the Petitioner must establish its ability to pay the proffered wage to this Beneficiary as well as its proffered wage obligations on the other I-140 petitions that were pending or approved as of, or filed after, the priority date of the current petition.²

As no evidence of the Petitioner's proffered wage obligations on its other I-140 petitions was submitted with this petition, nor any post-priority date evidence of the Petitioner's ability to pay the instant Beneficiary's proffered wage, the Director issued a request for evidence (RFE) in November 2018. In addition to the request for documentation relating to this Beneficiary, the Director asked the Petitioner to submit a list by receipt number of all the other I-140 petitions it had filed, the name of each beneficiary, the proffered wage and wages paid to each beneficiary in 2017 with supporting documentation, the priority date of each petition, the status of each petition (pending, approved, denied, or on appeal), and whether any beneficiary had obtained lawful permanent resident (LPR) status. Responding to the RFE in January 2019 the Petitioner submitted the 2018 annual report of its parent company, [REDACTED] headquartered in [REDACTED] Ireland, reporting consolidated net revenues of \$39.6 billion in the fiscal year ending August 31, 2018. The Petitioner also submitted copies of the Beneficiary's pay stubs for 2018 and a letter to USCIS from [REDACTED]'s U.S. Controller, [REDACTED] dated November 29, 2018, stating that the Petitioner has more than 100 employees, generated approximately 35% of the parent company's global net revenue in fiscal year 2018, and has the ability to pay the proffered wage. No evidence or information was provided with respect to the Petitioner's other I-140 petitions and beneficiaries.

In his decision the Director found that since the Petitioner's parent is a separate and distinct legal entity from the Petitioner, the fiscal year 2018 annual report of [REDACTED] could not be utilized to establish the Petitioner's ability to pay the proffered wage because it did not separately list the Petitioner's income, expenses and liabilities. The Director also noted that the Petitioner had not submitted any of the evidence or information request in the RFE about its other I-140 petitions and beneficiaries. The Director concluded that the Petitioner had not established its ability to pay any of its proffered wage obligations, and denied the petition accordingly.

² The Petitioner's ability to pay the proffered wage of one of the other I-140 beneficiaries is not considered:

- After the other beneficiary obtains lawful permanent residence;
- If an I-140 petition filed on behalf of the other beneficiary has been withdrawn, revoked, or denied without a pending appeal or motion; or
- Before the priority date of the I-140 petition filed on behalf of the other beneficiary.

On appeal the Petitioner refers once again to the fiscal year 2018 annual report of its parent company, previously submitted, and the November 2018 letter from the U.S. Controller, also previously submitted, asserting that the Petitioner has the ability to pay the proffered wage. The Petitioner cites a new letter from [REDACTED] "Secretary of the Managing Corporate General Partner of [REDACTED]" dated February 25, 2019, which allegedly confirms that the Petitioner generated approximately \$13 billion in revenues and employed more than 100 people during the fiscal year ending on August 31, 2018. The cited letter from [REDACTED] however, was not submitted with the appeal and is not a part of the record. Even if it were, we would not find it any more convincing than the earlier letter from the U.S. Controller. While USCIS has the discretion under 8 C.F.R. § 204.5(g)(2) to accept a statement from a financial officer attesting to the Petitioner's ability to pay the proffered wage, it need not regard the letter as persuasive evidence if, as in this case, the Petitioner has failed to provide requested evidence regarding its proffered wage obligations on any of its other I-140 petitions.

On appeal the Petitioner once again furnishes no evidence or information about its other I-140 petitions and beneficiaries, despite being requested to do so in the Director's RFE and being advised in the Director's decision that the failure to do so was a primary ground for denial. Without a complete accounting of the Petitioner's other I-140 petitions and the proffered wages it is obligated to pay those beneficiaries, we cannot determine the Petitioner's total proffered wage obligation to its I-140 beneficiaries. The Petitioner claims that its great size and business volume demonstrate its ability to pay all of its proffered wage obligations regardless of its neglect in providing the requested documentary evidence about its other I-140 petitions. The employee and net revenue figures cited by the Petitioner, however, do not appear in the parent company's annual report and are not corroborated by any other documentation in the record. The regulation at 8 C.F.R. § 103.2(b)(14) states that the failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the petition. The Petitioner's failure to provide requested evidence about its other I-140 petitions and beneficiaries has certainly precluded a material line of inquiry in this case – specifically, the Petitioner's total proffered wage obligation – and constitutes a ground for denying the petition.

USCIS may consider the totality of the Petitioner's circumstances, including the overall magnitude of its business activities, in determining the Petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of its net income and net current assets. We may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the petitioner's reputation within its industry, the overall number of employees, whether the beneficiary is replacing a former employee or an outsourced service, the amount of compensation paid to officers, the occurrence of any uncharacteristic business expenditures or losses, and any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

The Petitioner states that it was established in 2001, had 47,566 employees at the time this petition was filed in 2018, and had worldwide net annual income of \$34.9 million. The net annual income figure, however, appears in the 2017 annual report of the Petitioner's parent, [REDACTED] Like the parent's 2018 annual report, the 2017 annual report contains no separate net revenue figure for the Petitioner, nor any separate employee total for the Petitioner. As previously discussed in this decision, no documentation has been submitted that gives an independent financial picture of the Petitioner separate and apart from its parent. Therefore, the Petitioner has not established its ability to pay the proffered wages of all of its I-140 beneficiaries from the priority date of the instant petition onward based on the totality of its circumstances, in large part because it has not presented the totality of its circumstances for consideration.

III. CONCLUSION

The Petitioner has not established its continuing ability to pay the proffered wages of the instant Beneficiary and all of its other I-140 beneficiaries from the priority date of June 19, 2018, onward. The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden

ORDER: The appeal is dismissed.

Cite as *Matter of A- LLP*, ID# 5102021 (AAO Nov. 15, 2019)